

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

RICHARD KNECHT,

Plaintiff,

v.

Civil Action No. 5:09CV36  
(STAMP)

ERIE INSURANCE PROPERTY  
& CASUALTY COMPANY,

Defendant.

**MEMORANDUM OPINION AND ORDER**  
**DENYING WITHOUT PREJUDICE DEFENDANT'S**  
**MOTION FOR SUMMARY JUDGMENT AS PREMATURE**

On May 15, 2009, this Court entered a scheduling order in the above-styled civil action, ordering that all dispositive motions shall be filed by February 16, 2010. Thereafter, the plaintiff filed a motion to enlarge the time period to complete discovery. Before that motion was acted upon by this Court, however, the defendant filed a motion for summary judgment.

On February 16, 2010, this Court held a status and scheduling conference regarding the plaintiff's motion to enlarge the time period to complete discovery. At that time, this Court granted the plaintiff's motion and entered an amended scheduling order, in which discovery is to be completed by April 1, 2010, and dispositive motions shall be filed by April 15, 2010.

This Court believes, and case law suggests, that the parties are entitled to conduct discovery regarding any potential issues of material fact before responding to a summary judgment motion. The Supreme Court has found that summary judgment is appropriate only

when "no serious claim can be made that [the nonmovant] was in any sense 'railroaded' by a premature motion for summary judgment." Celotex Corp. v. Catrett, 477 U.S. 317, 326 (1986).

This Court finds that the plaintiff should be given "the opportunity to discover information that is essential to [their] opposition." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986). Furthermore, the defendant conceded at the status and scheduling conference held on February 16, 2010, that its motion for summary judgment was premature, especially in light of this Court's ruling to amend the scheduling order and extend discovery until April 1, 2010. Accordingly, the defendant's motion for summary judgment is hereby DENIED WITHOUT PREJUDICE as premature, subject to refiling after the parties have completed discovery in this action.

IT IS SO ORDERED.

The Clerk is directed to transmit a copy of this order to counsel of record herein.

DATED: February 16, 2010

/s/ Frederick P. Stamp, Jr.  
FREDERICK P. STAMP, JR.  
UNITED STATES DISTRICT JUDGE